



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

CASE OF GLUHAR v. SLOVENIA

(Application no. 14852/03)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

21/03/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gluhar v. Slovenia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr C. BÎRSAN, *President*,

Mr B.M. ZUPANČIČ,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 November 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 14852/03) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovenian national, Ms Ana Marija Gluhar (“the applicant”), on 30 April 2003.

2. The applicant was represented by the lawyer, Ms Darja Roblek. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicant alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which she was a party was excessive. In substance, she also complained about the lack of an effective domestic remedy in respect of the excessive length of the proceedings (Article 13 of the Convention).

4. On 16 September 2005 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Applying Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicant was born in 1938 and lives in Žirovnica.

1. Denationalisation proceedings

6. On 1 June 1994 the Ljubljana Center Municipality (*Občina Ljubljana Center*) issued a denationalisation decision in favour of deceased I.Z., ordering the return of the ownership of certain real estate that he had owned prior to 1948. The decision was issued on the basis of a request made on 8 March 1993 by A.P. – one of the potential heiresses and a later possessor of the denationalised property of I.Z.

7. On 1 March 1995 the Administrative Unit of Ljubljana (*Upravna enota Ljubljana, Izpostava Center*) – responsible for denationalisation proceedings after the reform of the public administration – reopened the denationalisation proceeding in part.

8. A.P. filed an appeal against the decision of 1 March 1995; she also requested that the decision of 1 June 1994 be annulled. The appeal was rejected on 5 January 1996 by the Ministry of Economy (*Ministrstvo za gospodarske dejavnosti*).

9. On 14 February 1996 A.P. instituted administrative dispute against the decision of the Ministry of Economy.

10. On 15 July 1997 the applicant submitted an application for joining the proceedings as an intervening party. On 16 August 1997 a copy of A.P.'s claim was served on the applicant.

11. On 21 February 2001 the Administrative Court (*Upravno sodišče*) issued a judgment upholding the claim, annulling the decision of 5 January 1996 and referring the case to the Ministry of Environment and Spatial Planning (*Ministrstvo za okolje in prostor*). The judgment was served on the applicant on an unspecified date.

12. On 19 March 2001 the applicant lodged an appeal against the Administrative Court's judgment.

On 26 March 2003 the Supreme Court (*Vrhovno sodišče RS*) rejected the appeal.

13. Subsequently, on 9 October 2003 the Ministry of Environment and Spatial Planning (paragraph 11 above) annulled the decision of 1 March 1995, but rejected A.P.'s request for annulment of the decision of 1 June 1994.

14. On 3 December 2003 A.P. lodged a (new) request for annulment of the decision of 1 June 1994.

On 22 December 2003 the Ljubljana Administrative Unit declared the denationalisation decision of 1 June 1994 void and ordered that the previous ownership regarding the real estate in question be entered into the Land Registry. The request for denationalisation of 8 March 1993 was sent to the competent department of the Ljubljana Administrative Unit which was expected to decide on the request.

15. On 16 April 2004, the Ljubljana Local Court (*Okrajno sodišče v Ljubljani*) issued a decision concerning the change in the Land Registry.

On 10 June 2004 the same court rejected the applicant's objection.

On 8 December 2004 the Ljubljana Higher Court (*Višje sodišče v Ljubljani*) rejected the applicant's appeal. The decision was served on the applicant on 27 December 2004.

16. It appears that the denationalisation proceedings are still pending before the Ljubljana Administrative Unit (see paragraph 14 above).

2. Inheritance proceedings

17. On 19 December 1996 the applicant, who claimed to be an heiress to I.Z., lodged with the Ljubljana Local Court (*Okrajno sodišče v Ljubljani*) a request to open inheritance proceedings in respect of the real estate restored by the denationalisation decision of 1 June 1994 (see paragraph 6 above).

On 6 March 2001 and 25 March 2002, respectively, two apparent relatives submitted an application to join the inheritance proceedings.

A hearing was held on 7 October 2002.

18. On 2 February 2003 the Ljubljana Local Court discontinued the inheritance proceedings finding that the denationalisation proceedings were still pending. It held that it would only be possible to reinstate them again when the denationalisation proceedings became final. The decision was served on the applicant on 15 March 2003.

19. On 27 March 2003 the applicant lodged an appeal against the decision to discontinue the inheritance proceedings.

On 20 April 2004 the court requested the applicant to pay fees for the appeal.

20. According to the Government, on 15 October 1998 and 11 September 2002 two applicant's lawyers cancelled their authority for representation. On 5 April 2004, she appointed a third lawyer.

21. On 6 May 2004 the applicant requested the continuation of the inheritance proceedings in respect of the property which was reinstated by the Ljubljana Administration Unit's denationalisation decision of 9 January 2004 in apparently separate proceedings. She proposed that the court acquired the information about remaining heirs by means of announcement in the Official Journal.

22. On 30 September 2004 the court asked the applicant to inform the court whether she still insisted on appeal of 27 March 2003. On 13 October 2004 the applicant confirmed that she was still interested in pursuing her appeal.

23. On 15 October 2004 the applicant supplemented the appeal.
The proceedings are pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

24. The applicant complained about the excessive length of the inheritance proceedings. She relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

25. In substance, the applicant further complained that the remedies available for excessive legal proceedings in Slovenia were ineffective. Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

26. The Government pleaded non-exhaustion of domestic remedies.

27. The applicant contested that argument, claiming that the remedies available were not effective.

28. The Court notes that the present application is similar to the cases of *Belinger* and *Lukenda* (see *Belinger v. Slovenia* (dec.), no. 42320/98, 2 October 2001, and *Lukenda v. Slovenia*, no. 23032/02, 6 October 2005). In those cases the Court dismissed the Government's objection of non-exhaustion of domestic remedies because it found that the legal remedies at the applicant's disposal were ineffective. The Court recalls its findings in the *Lukenda* judgment that the violation of the right to a trial within a reasonable time is a systemic problem resulting from inadequate legislation and inefficiency in the administration of justice.

29. As regards the instant case, the Court finds that the Government have not submitted any convincing arguments which would require the Court to distinguish it from its established case-law.

30. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6 § 1

31. The Court at the outset notes that the applicant's complaint essentially concerns the length of the inheritance proceedings. The Court however acknowledges that the two sets of the proceedings appear to be related and that the inheritance proceedings were ultimately discontinued pending the outcome of the denationalisation proceedings. The Court will thus consider the conduct of the denationalisation proceedings, in which the applicant was given a status of intervening party, as a relevant factor in assessing the reasonableness of the length of the inheritance proceedings.

a) Period to be taken into consideration

32. The period to be taken into consideration began on 19 December 1996, when the applicant lodged a request for inheritance proceedings in respect of I.Z.'s denationalized property, and has not yet ended. Therefore, they have lasted more than nine years and ten months.

33. As to the denationalisation proceedings the Government argued that the relevant period started to run only on 15 July 1997, the day the applicant had requested to join the proceedings as an intervening party. The Government, in addition, asserted that these proceedings ended with the Supreme Court's judgment of 26 March 2003.

The Court does not consider it necessary to establish the starting point as concerns the length of the denationalisation proceedings (see paragraph 31 above). The Court however notes that there is no indication in the case-file that, in the denationalisation proceedings, a final decision has been issued insofar.

b) The reasonableness of the length of the proceedings

34. In respect of the inheritance proceedings, the Government argued that the case was a complex one, in particular because not all heirs of I.Z. were identified and because the denationalisation decision was partly annulled. Moreover, the changes in the applicant's legal representation also contributed to the length of the proceedings.

As to the denationalisation proceedings, the Government submitted that the case was a complex one and that certain delays could be attributed to the reorganization of the administrative judicial system (*upravno sodstvo*) in 2000.

35. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake

for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

36. As regards the denationalisation proceedings, the Court attaches importance to two periods of inactivity for which the State was essentially responsible: the delay in the proceedings before the Administrative Court, which were pending for five years (see paragraphs 9-11 above), and the delay of two years between the lodging of an appeal and the delivery of the Supreme Court's judgment (see paragraph 12 above). The Court moreover notes that the proceedings are pending before the competent department of the Ljubljana Administrative Unit for almost three years while there is no indication of any progress being made insofar (paragraph 14 above).

As to the argument based on the reorganization of the administrative judicial system, it must not be forgotten that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements (see, among many other authorities, the *Tusa v. Italy*, judgment of 27 February 1992, Series A no. 231-D, p. 41, § 17).

37. The Court notes that the inheritance proceedings have lasted for more than nine years and ten months which is a considerable length of time. Such length is excessive all the more in view of the fact that the proceedings were discontinued awaiting the conclusion of denationalisation proceedings. The latter are again pending before the first-instance administrative authorities.

The Court considers that the conduct of the applicant or the complexity of the legal and factual issues, including the denationalisation proceedings, cannot justify such a length.

38. The Court moreover notes that, while it appears that the progress of the inheritance proceedings was obstructed by the annulment of the denationalisation decision and the subsequent proceedings, it was only on 2 February 2003 that the court discontinued the inheritance proceedings. It is also striking that, in the inheritance proceedings, the court has still not decided on the applicant's appeal of 27 March 2003.

39. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable-time" requirement.

There has accordingly been a breach of Article 6 § 1.

2. Article 13

40. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the objections and arguments put forward by the Government have been rejected in earlier

cases (see *Lukenda*, cited above) and sees no reason to reach a different conclusion in the present case.

41. Accordingly, the Court considers that in the present case there has been a violation of Article 13 on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

43. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

44. The Government contested the claim.

45. As far as the applicant's claim may refer to pecuniary damage, the Court notes that the applicant could seek reimbursement before domestic courts; it therefore rejects this claim (see *Lukenda*, cited above, § 59). The Court, however, considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 3,200 under that head.

B. Costs and expenses

46. The applicant claimed also costs and expenses incurred before the Court. She however did not clearly specify her claim.

47. The Government did not provide any comments in this respect.

48. According to the Court's case-law, an applicant is entitled to reimbursement of her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Although the applicant did not specify her claim, the Court considers, having regard to the information in its possession and the above criteria, that the applicant, who was represented by the lawyer but apparently produced all submissions by herself, must have had expenses with the proceedings before the Court and considers it reasonable to award her EUR 600.

C. Default interest

49. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,200 (three thousand two hundred euros) in respect of non-pecuniary damage and EUR 600 (six hundred euros) in respect of costs and expenses, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Corneliu BÎRSAN
President